

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FREEPLAY MUSIC, LLC,

Plaintiff,

v.

HEARST MAGAZINES, INC.,

Defendant.

Civil Action No. _____

**COMPLAINT AND JURY
DEMAND**

Plaintiff Freeplay Music, LLC (“FPM”), through its undersigned attorneys, Baker Hostetler, LLP, complains of defendant Hearst Magazines, Inc. (“Hearst”):

Nature of the Action

1. By this complaint, FPM—a music publisher that has invested and risked money, time, and energy to develop its catalogue of copyrights—seeks redress for Hearst’s copyright infringement. Hearst exploited, without authorization, 15 of FPM’s copyrighted sound recordings and compositions by incorporating them into videos, posted on 45 websites, for its own products. Despite being on notice of its infringement, Hearst has refused to remedy its wrongdoing, leaving FPM no alternative but to bring this action.

Parties

2. FPM is a Delaware limited liability company, with a principle place of business in New York, New York.

3. Hearst is a Delaware corporation with a registered address at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and principle place of business in New York, New York.

Jurisdiction and Venue

4. FPM's claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

5. Venue in this District is proper under 28 U.S.C. § 1391.

6. The Court has personal jurisdiction over Hearst under New York Civil Practice Law and Rule 302(a) because Hearst's principal place of business is in New York and it transacts business within the State of New York and contracts with third parties that supply goods and services in the State of New York. Furthermore, Hearst, upon information and belief, derives substantial revenue from interstate commerce, conducts business over the Internet, and has performed acts causing harm to FPM, including infringing copyrights belonging to FPM, a New York copyright holder, which give rise to this action.

FPM and Its Business

7. In 2001, Scott Schreer, one of America's most prolific and performed TV composers and producers, launched FPM, a high quality online music library. Schreer, whose credits include, among many others, the *NFL on Fox* theme, is also a contributing composer to a portion of FPM's catalogue.

8. FPM makes its catalogue available on its website. To download music a user must obtain a license that corresponds to the user's use (i.e., personal, commercial, etc.). The cost of such license varies depending on use.

9. With over 200,000,000 impressions to its website as of 2013, FPM is one of the most widely trafficked production music libraries in the industry. Since August 2013, FPM has issued over 3 million licenses to the copyrighted music in its library.

10. All use of FPM's music requires a license.

11. When a user logs on to FPM's website, <http://www.freeplaymusic.com/>, the user is presented with a variety of choices and thousands of musical works (i.e., sound recordings and the underlying musical compositions), all of which are available for certain types of exploitation. Once the user chooses the desired musical work and selects "Add to Cart," the user is prompted to choose a license type:

Duration	License Type	License Fee	Terms
06:16	Select Select YouTube Business Use- Youtube (unlimited URLs)(1 Year(s), \$250.00) Personal use on YouTube only(99 Year(s), \$0.00) Business Multimedia Unlimited (non-broadcast) [worldwide](1 Year(s), \$250.00) Music on Hold [single track](1 Year(s), \$25.00) Web Page Use(1 Year(s), \$100.00) Multimedia one use (non-broadcast) [worldwide](1 Day(s), \$50.00) Game/App Use(1 Year(s), \$150.00) Education In-Classroom Use(99 Year(s), \$0.00) Film Commercial Film Festival [track](7 Day(s), \$50.00) Commercial Unlimited Film Festivals [per track](1 Year(s), \$150.00) Student Film Festival (non commercial)(1 Year(s), \$0.99) Professional Use (per track)(1 Year(s), \$500.00) Indie trailer (theatrical and web) [US Only](1 Year(s), \$250.00) Internet Personal use (Social Media)- non promotional(99 Year(s), \$0.99)		<u>Terms of Use</u> <div>Add more Tracks</div> <div>Proceed to checkout</div>

12. The user cannot "Proceed to Checkout" without choosing a license type.

13. Once the user chooses a license and decides to "Proceed to Checkout," a window pops up displaying the "FPM License," requiring the user to enter an email address confirming that he or she has read the terms of the license. A copy of the license is then e-mailed to the confirmation address entered by the user.

14. Until July 2013, any exploitation of FPM's music "posted on a website" required a paid license. After July 2013, a user could obtain a free license to use certain music in FPM's

catalogue on YouTube, provided it was for “personal use” only. Any “business use” of FPM’s music requires a paid license.

Hearst

15. Upon information and belief, Hearst is one of the world’s largest publishers of monthly magazines.

16. Upon information and belief, Hearst Digital Media is a unit of Hearst.

17. Upon information and belief, Hearst Digital Media creates custom content and publishes a portfolio of websites that serve as the companions to readers of Hearst’s magazines.

18. Upon information and belief, Elle and Car and Driver are two of Hearst Digital Media’s digital brands.

19. Upon information and belief, Hearst Digital Media created audio-visual works for Elle and Car and Driver and published some of these audio-visual works on different Internet sites, including, but not limited to, the Internet site hosted by YouTube.

The FPM Copyrights at Issue and Hearst’s Unauthorized Exploitation

FPM’s Copyrights

20. FPM is the owner of the registered copyrights (the “FPM Copyrights”) in and to the musical compositions and sound recordings (the “FPM Copyrighted Music”) set forth below:

- a. “Bad Road,” covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.
- b. “Bomp,” covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.
- c. “Come On,” covered by Registration No. SR 374-845 covering the collection *Freeplay Music Corp/DVD #2*.

- d. “Determined Tumbao,” covered by Registration No. SR 335-708 covering the collection *World Mix Volume 5*.
- e. “Feels Like Spring,” covered by Registration No. SR 374-845 covering the collection *Freeplay Music Corp/DVD #2*.
- f. “Fully Loaded & Ready 2 Go,” covered by Registration No. SR 633-492 covering the collection *Freeplay Music, LLC/CD #12*.
- g. “Good Time,” covered by Registration No. SR 374-845 covering the collection *Freeplay Music Corp/DVD #2*.
- h. “Head Them Up,” covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.
- i. “Jump,” covered by Registration No. SR 374-912 covering the collection *Freeplay Music Corp./DVD #3*.
- j. “Not Enough,” covered by Registration No. SR 337-057 covering the collection *Dance & Pop Volume 1*.
- k. “Rubber Bullet,” covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.
- l. “Scared,” covered by Registration No. SR 374-912 covering the collection *Freeplay Music Corp./DVD #3*.
- m. “Unabomber,” covered by Registration No. SR 336-934 covering the collection *Sports Extreme Volume 1*.
- n. “The Wall,” covered by Registration No. SR 335-708 covering the collection *World Mix Volume 5*.
- o. “Wild Child,” covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.

Hearst’s Unlicensed Use of FPM’s Music Copyrights

21. Since June 10, 2008, Hearst has engaged in at least 45 uses of the FPM Copyrights, including:

- a. FPM’s copyrighted musical work “Bad Road” is exploited on the following websites:
<http://www.youtube.com/watch?v=mYZ0dhUykTM> and
http://www.youtube.com/watch?v=LSIt2_zfPA.
- b. FPM’s copyrighted musical work “Bomp” is exploited on the following website:
<http://www.youtube.com/watch?v=POwqX9SKF6o>.

- c. FPM's copyrighted musical work "Come On" is exploited on the following website: <http://www.youtube.com/watch?v=Zmnc9NzYop4>.
- d. FPM's copyrighted musical work "Determined Tumbao" is exploited on the following websites: <http://www.youtube.com/watch?v=mSwkqVtxuQ4> and http://www.youtube.com/watch?v=j9k5Lo_ja_w.
- e. FPM's copyrighted musical work "Feels Like Spring" is exploited on the following website: <http://www.youtube.com/watch?v=Zmnc9NzYop4>.
- f. FPM's copyrighted musical work "Fully Loaded & Ready 2 Go" is exploited on the following website: http://www.youtube.com/watch?v=Elv8_sW6atc.
- g. FPM's copyrighted musical work "Good Time" is exploited on the following websites: <http://www.youtube.com/watch?v=nRW4lzusdIY> and <http://www.youtube.com/watch?v=cIkhM6E2jPw>.
- h. FPM's copyrighted musical work "Head Them Up" is exploited on the following website: http://www.youtube.com/watch?v=LSltd2_zfPA.
- i. FPM's copyrighted musical work "Jump" is exploited on the following websites:
<http://www.youtube.com/watch?v=rvzUFVMJJko>,
<http://www.youtube.com/watch?v=J2lA1Tf7LoI>,
<http://www.youtube.com/watch?v=pmxTuqlIrg8>,
<http://www.youtube.com/watch?v=mBMNewlp5lc>,
<http://www.youtube.com/watch?v=YzRVRjErCE4>,
<http://www.youtube.com/watch?v=cpQP3S2ajwo>,
<http://www.youtube.com/watch?v=6s-OodxA-8U>,
<http://www.youtube.com/watch?v=8615BSF9E6s>,
<http://www.youtube.com/watch?v=f6GDbMUNB48>,
<http://www.youtube.com/watch?v=B0FcIbVTSL4>,
<http://www.youtube.com/watch?v=3t2Z8gj0lA4>,
<http://www.youtube.com/watch?v=uMQ4PeXgasI>,
<http://www.youtube.com/watch?v=PjLyPmcoqNE>,
<http://www.youtube.com/watch?v=KQeYWyh9B9k>,
<http://www.youtube.com/watch?v=tFIilvpliK0>,
<http://www.youtube.com/watch?v=t17ea-EHEws>,
<http://www.youtube.com/watch?v=ig0rkcMEwaI>,
<http://www.youtube.com/watch?v=xHtT0RzIrFs>,
<http://www.youtube.com/watch?v=pdJXUo5I6wo>,
<http://www.youtube.com/watch?v=ji2ee5TcofE>,
<http://www.youtube.com/watch?v=rxxEvIQ3HyI>,
<http://www.youtube.com/watch?v=cuNuibGXZUw>,
<http://www.youtube.com/watch?v=zSloozar3ek>,
<http://www.youtube.com/watch?v=vyjJq8KOqwc>,
<http://www.youtube.com/watch?v=x9bErYCkA-4>,

<http://www.youtube.com/watch?v=bfAaXGQmdlI0>, and
<http://www.youtube.com/watch?v=bhpT90OpImw>.

- j. FPM's copyrighted musical work "Not Enough" is exploited on the following website:
<http://www.youtube.com/watch?v=MaR4Ib8LhPM>.
 - k. FPM's copyrighted musical work "Rubber Bullet" is exploited on the following website:
<http://www.youtube.com/watch?v=QOC6JqR19OA>.
 - l. FPM's copyrighted musical work "Scared" is exploited on the following website:
<http://www.youtube.com/watch?v=jDGoUrqwZjE>.
 - m. FPM's copyrighted musical work "Trudge" is exploited on the following website:
http://www.youtube.com/watch?v=Elv8_sW6atc.
 - n. FPM's copyrighted musical work "Unabomber" is exploited on the following website:
<http://www.youtube.com/watch?v=F4tp2VYhhTI>.
 - o. FPM's copyrighted musical work "The Wall" is exploited on the following website:
<http://www.youtube.com/watch?v=OPrPVAjHxt0>.
 - p. FPM's copyrighted musical work "Wild Child" is exploited on the following website:
<http://www.youtube.com/watch?v=CqabNfwnEhM>.
22. Upon information and belief, Hearst posted, or caused to be posted, the videos identified in paragraph 21.
23. Hearst did not receive a license to exploit FPM's Copyrighted Music in the manner set forth in paragraph 21.
24. Upon information and belief, Hearst copied and publicly performed FPM's Copyrighted Music through digital transmissions on the websites set forth in paragraph 21.
25. Upon information and belief, at all relevant times, Hearst maintained editorial control for content performed and/or copied on the websites set forth in paragraph 21.
26. In January 2015, FPM's agent, TuneSat, LLC ("TuneSat") contacted Hearst Corporation regarding Hearst's use of FPM Copyrighted Music. TuneSat corresponded with, upon

information and belief, legal counsel for Hearst from January 2015 to June 2015 but a resolution of this matter was not reached.

Count I:
Copyright Infringement

27. FPM incorporates the allegations set forth in paragraphs 1 through 26 hereof, inclusive, as though the same were set forth herein.

28. This cause of action arises under 17 U.S.C. § 501.

29. Each of the FPM Copyrights has been registered with the United States Copyright Office.

30. FPM owns all exclusive rights under 17 U.S.C. § 106 to the FPM Copyrighted Music.

31. Each of the musical works covered by the FPM Copyrights is an original work and constitutes copyrightable subject matter within the meaning of 17 U.S.C. § 102.

32. FPM has never granted Hearst or otherwise authorized Hearst to exploit the musical works covered by the FPM Copyrights.

33. Hearst's acts violate FPM's exclusive rights under 17 U.S.C. §106.

34. Hearst's infringement of the FPM Copyrights is and has been willful, intentional, purposeful, and/or in disregard of FPM's rights.

35. FPM is entitled to its damages and Hearst's profits from the alleged infringement, in an amount to be proven at trial.

36. In the alternative, FPM is entitled to statutory damages, in an amount of up to \$150,000 per infringed copyright.

PRAYER FOR RELIEF

WHEREFORE, FPM respectfully prays for judgment against Hearst as follows:

- (a) for a ruling that Hearst has willfully infringed FPM's copyrights;
- (b) for injunctive relief prohibiting Hearst from exploiting the FPM Copyrighted Music;
- (c) for FPM's damages and, to the extent not duplicative, Hearst's profits attributable to the infringement;
- (d) in the alternative to actual damages, for statutory damages under 17 U.S.C. § 504(c), in an amount of up to \$150,000 per work;
- (e) for FPM's costs of this action, including reasonable attorneys' fees under 17 U.S.C. § 505;
- (f) for prejudgment and post judgment interest; and
- (g) for such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: March 8, 2016
New York, New York

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